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IN THE UNITED STATES DISTRICT COURT
6
FOR THE DISTRICT OF ARIZONA
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8 North Shore Bank, FSB,) No. MC 15-00044-PHX-GMS
9)
10 Plaintiff/Judgment Creditor,)
vs.)
11 Darrel Keuck,)
12)
13 Defendant/Judgment Debtor.)
14 _____)
15 JPMorgan Chase Bank, NA,)
16 Garnishee.)
17 _____)
18

19 **REPORT AND RECOMMENDATION**

19 TO THE HONORABLE G. MURRAY SNOW, UNITED STATES DISTRICT JUDGE:

20 Plaintiff/Judgment Creditor North Shore Bank has filed an Application for
21 Judgment on Garnishment. (Doc. 13.) Plaintiff seeks entry of judgment against Garnishee
22 JPMorgan Chase Bank, for nonexempt monies in the amount of \$2,229.50, which
23 Plaintiff alleges belongs to Defendant/Judgment Debtor Darrel Keuck. On September 18,
24 2015, Plaintiff's Application was referred to United States Magistrate Judge John Z.
25 Boyle for further proceedings. (Doc. 15.)

26 On April 3, 2015, the United States District Court for the District of Utah, Central
27 Division, entered default judgment against Defendant. (Doc. 1 at 2.) As part of the
28 judgment, the Court ordered Defendant to pay Plaintiff a principal in the amount of

1 \$670,000.00, late charges in the amount of \$276,226.87, appraisal costs in the amount of
 2 \$380.00, attorneys' fees in the amount of \$10,965.85, and interest in the amount of
 3 \$147,221.15 through October 14, 2014, and \$13,214.52 for the period between October
 4 14, 2014, and March 3, 2015. (*Id.* at 3.) In total, the District Court entered default
 5 judgment against Defendant in the amount of \$968,008.39. (*Id.*) On July 16, 2015,
 6 Plaintiff filed an Application for Writ of Garnishment of Non-Earnings (Doc. 6), alleging
 7 that Garnishee is holding money for Defendant which is not exempt from collection. On
 8 July 21, 2015, the Deputy Clerk issued a Writ of Garnishment and Summons (Non-
 9 Earnings) (Doc. 9), ordering Garnishee to file an answer.

10 On August 3, 2015, Garnishee filed an Answer to Writ of Garnishment (Non-
 11 Earnings). (Doc. 12.) In the Answer, Garnishee states that it is indebted or otherwise is
 12 in possession of nonexempt monies of Defendant, \$2,229.50 of which it has withheld.
 13 (*Id.* at 1.) Garnishee also states that it mailed, via regular first class mail, copies of the
 14 Writ and Summons, underlying Judgment, Notice to Judgment Debtor, and Request for
 15 Hearing to Defendant on July 24, 2015, and a copy of the Answer to Plaintiff and
 16 Defendant on July 29, 2015. (*Id.* at 2.) Defendant did not file an objection to the Writ or
 17 Answer, or request a hearing. On August 21, 2015, Plaintiff filed the instant Application
 18 for Judgment on Garnishment. (Doc. 13.)

19 Under Arizona's garnishment statute,¹ "the garnishee shall deliver a copy of the
 20 answer and a copy of the notice to judgment debtor and request for hearing form to the
 21 judgment debtor." Ariz. Rev. Stat. § 12-1598.08(C). In filing an answer to the writ of
 22 garnishment, "the garnishee shall deliver a copy of the answer to the judgment debtor and
 23 the judgment creditor" and the answer shall set forth "[t]he date and manner of delivery
 24 to the judgment debtor of a copy of the writ and the notice to judgment debtor." Ariz.

25 ¹ The process to enforce a judgment for the payment of money is a writ of execution,
 26 unless the district court directs otherwise. Fed. R. Civ. P. 69(a)(1). Generally, a federal
 27 writ of execution "must accord with the procedure of the state where the court is located."
Id.

1 Rev. Stat. § 12-1579(C), (D)(12).

2 “A party who has an objection to the writ of garnishment, the answer of the
 3 garnishee or the amount held by the garnishee or a party claiming an exemption from
 4 garnishment may, not later than ten days after the receipt of the answer, file a written
 5 objection and request for hearing.” Ariz. Rev. Stat. § 12- 1580(A). If the answer of the
 6 garnishee “shows that the garnishee was indebted to the judgment debtor at the time of
 7 service of the writ, and no objection to the writ or answer is timely filed, on application
 8 by the judgment creditor the court shall enter judgment on the writ against the garnishee
 9 for the amount of the nonexempt monies of the judgment debtor owed or held by the
 10 garnishee at the time of service of the writ.” Ariz. Rev. Stat. § 12-1584(A).

11 In the instant case, the Writ of Garnishment and Summons instructs Garnishee to
 12 provide “[t]he date and manner of delivery of a copy of the Writ and Notice to the
 13 Judgment Debtor,” and “a copy of the Answer to the Judgment Creditor and Judgment
 14 Debtor.” (Doc. 9.) Garnishee’s Answer states that Garnishee served Defendant and
 15 Plaintiff with the required documents. (Doc. 12 at 2.) Moreover, under Arizona’s
 16 garnishment statute, a presumption exists “that a document has been received five days
 17 after it is mailed . . .” Ariz. Rev. Stat. § 12-1597(A). Here, because Garnishee avers that
 18 it mailed the Writ of Garnishment, Notice to Judgment Debtor, and Request for Hearing
 19 forms to Defendant on July 24, 2015, and mailed Garnishee’s Answer to Defendant on
 20 July 29, 2015, it may be presumed that Defendant received those documents. Further,
 21 Plaintiff indicates that it mailed Defendant a copy of its Application for Judgment on
 22 Garnishment on August 21, 2015. (Doc. 13 at 2.) Therefore, the Court finds that
 23 Defendant was afforded an opportunity to object to the garnishment and request a
 24 hearing, but has not done so. Based on this record, the Court will recommend that the
 25 Application for Judgment on Garnishment be granted and judgment entered.

26 Accordingly,

27 **IT IS RECOMMENDED** that Plaintiff’s Application for Judgment on

1 Garnishment (Doc. 13) be granted and judgment entered.

2 This recommendation is not an order that is immediately appealable to the Ninth
3 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules
4 of Appellate Procedure, should not be filed until entry of the district court's judgment.
5 The parties shall have 14 days from the date of service of a copy of this recommendation
6 within which to file specific written objections with the Court. *See* 28 U.S.C. §
7 636(b)(1); Fed. R. Civ. P. 6(a), 6(b) and 72. Thereafter, the parties have 14 days within
8 which to file a response to the objections.

9 Failure to timely file objections to the Magistrate Judge's Report and
10 Recommendation may result in the acceptance of the Report and Recommendation by the
11 district court without further review. *See United States v. Reyna-Tapia*, 328 F.3d 1114,
12 1121 (9th Cir. 2003). Failure to timely file objections to any factual determinations of
13 the Magistrate Judge will be considered a waiver of a party's right to appellate review of
14 the findings of fact in an order of judgment entered pursuant to the Magistrate Judge's
15 recommendation. *See* Fed. R. Civ. P. 72.

16 **IT IS ORDERED** that on or before **October 6, 2015**, Plaintiff/Judgment Creditor
17 shall serve a copy of this Report and Recommendation on Defendant/Judgment Debtor
18 Darrel Keuck, and file proof of service.

19 Dated this 2nd day of October, 2015.

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22 Honorable John Z. Boyle
23 United States Magistrate Judge
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